

## **FINAL STATEMENT OF REASONS**

### **(Government Code § 11346.9(a))**

#### **(1) UPDATE OF INITIAL STATEMENT OF REASONS**

Section 22610.1(a)(1) of the proposed regulations, as originally noticed to the public, defined “health care provider” for purposes of obtaining access to the Written Advance Health Care Directive Registry. The Secretary of State received a written public comment urging that the definition of “health care provider” be limited to those providing health care to the registrant. (*See Rulemaking File, Tab D.*) Consequently, on March 16, 2006, the Secretary of State modified the text of the proposed regulation to limit the definition of “health care provider” to those providing health care to the registrant. The Secretary of State found the modification to the text of the regulation as originally noticed to the public to be sufficiently related to the original text, as those terms are used in *Government Code* § 11346.8(c), and as defined in Section 42 of Title 1 of the *California Code of Regulations*, since a reasonable member of the directly affected public could have determined from the notice that this change to the regulation could have resulted. Notice of the proposed modification to the text of the regulation and inviting public comment was mailed to the commentator and posted on the Secretary of State’s website, as required by law. (*See Rulemaking File, Tabs E and I.*)

Section 22610.2(a) of the proposed regulations, as originally noticed to the public, set forth what the form could include for registering with the Secretary of State a Written Advance Health Care Directive. The Secretary of State received a written public comment urging that a way be included for persons with sensory and other disabilities to utilize the registration form. (*See Rulemaking File, Tab D.*) Consequently, on March 16, 2006, the Secretary of State modified the text of the proposed regulation to make it clear that, like the Written Advance Health Care Directive itself, the registration could be completed for the registrant, in whole in part, by an adult in the registrant’s presence and at the registrant’s direction. The Secretary of State found the modification to the text of the regulation as originally noticed to the public to be sufficiently related to the original text, as those terms are used in *Government Code* § 11346.8(c), and as defined in Section 42 of Title 1 of the *California Code of Regulations*, since a reasonable member of the directly affected public could have determined from the notice that this change to the regulation could have resulted. Notice of the proposed modification to the text of the regulation and inviting public comment was mailed to the commentator and posted on the Secretary of State’s website, as required by law. (*See Rulemaking File, Tabs E and I.*)

On March 16, 2006, Sections 22610.1(a) and 22610.2(a) were modified by underlining certain numbers and letters that were inadvertently omitted from the text of the proposed regulations, as originally noticed to the public. (*See Rulemaking File, Tab D.*) The underlining was designed to show that the numbers

and letters were proposed to be added to the *California Code of Regulations*. The Secretary of State found these modifications to the text of the regulation as originally noticed to the public to be nonsubstantial or totally grammatical in nature, as those terms are used in *Government Code* § 11346.8(c), and as defined in Section 40 of Title 1 of the *California Code of Regulations*, since they merely clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text. Nevertheless, notice of the proposed modifications to the text of the regulations and inviting public comment was mailed to the commentator and posted on the Secretary of State's website. (*See Rulemaking File, Tabs E and I.*)

No comments were received regarding the proposed modifications to the regulations.

## **(2) LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

## **(3) SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JANUARY 12, 2006 THROUGH MARCH 15, 2006**

**Comment Number 1:** In a letter received March 9, 2006, from Matthew R. Fishler, Staff Attorney, Protection & Advocacy, Inc. (*see Rulemaking File, Tab D*), the Secretary of State was urged to modify Regulation 22610.1 to clarify that only a health care provider of the registrant may access information about registrants.

**Response to Comment Number 1:** The Secretary of State modified the regulation accordingly to clarify that only a health care provider providing health care to the registrant may access information about the registrant. *See Rulemaking File, Tabs E and I.* The commentator submitted no additional comment during the additional public comment period.

**Comment Number 2:** In a letter received March 9, 2006, from Matthew R. Fishler, Staff Attorney, Protection & Advocacy, Inc. (*see Rulemaking File, Tab D*), the Secretary of State was urged to modify Regulation 22610.2 to establish an alternative, non-written registration procedure to serve consumers with sensory and other disabilities.

**Response to Comment Number 2:** The Secretary of State modified the regulation accordingly to make clear that, like the Written Advance Health Care Directive itself, the registration could be completed for the registrant, in whole or in part, by an adult in the registrant's presence and at the registrant's direction. *See Rulemaking File, Tabs E and I.* The commentator submitted no additional comment during the additional public comment period.

**Comment Number 3:** In a letter received March 9, 2006, from Matthew R. Fishler, Staff Attorney, Protection & Advocacy, Inc. (*see Rulemaking File, Tab D*), the Secretary of State was urged to modify the regulations to insert language with the following effect: “Nothing in the Probate Code sections 4800 through 4805 prevents an advance directive that has not been registered with the Secretary of State’s registry from being fully honored and implemented.”

**Response to Comment Number 3:** Although the comment was carefully considered, the Secretary of State did not modify the regulations as requested. The Secretary of State determined that the request is specifically addressed by *Probate Code* § 4803, and that including the requested language in the regulations would violate the nonduplication standard set forth in *Government Code* §§ 11349 and 11349.1(a)(6) and 1 *CCR* § 12. The commentator was so advised. (*See Rulemaking File, Tab D.*) The commentator submitted no additional comment during the additional public comment period.

**NO OTHER COMMENTS WERE RECEIVED DURING THE ORIGINAL (JANUARY 12, 2006 THROUGH MARCH 15, 2006) OR SUBSEQUENT (MARCH 16, 2006 THROUGH APRIL 3, 2006) COMMENT PERIOD.**

#### **(4) ALTERNATIVES DETERMINATION**

The Secretary of State has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

#### **(5) PROPOSED ALTERNATIVES**

No proposed alternatives that would lessen the adverse economic impact on small business have been proposed.